

ADOPT

Text of Proposed Regulatory Action

Article 4. Peace Officer Certification

§ 1205. Serious Misconduct.

(a) ~~Serious Misconduct is an act or acts, or an omission or omissions, demonstrating a lack of fitness to serve as a peace officer in the State of California. Serious misconduct includes, but is not limited to, the following:~~

- (1) Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest, and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.
- (2) Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the abuse of power was a knowing abuse of the power and authority of a public office.
- (3) Physical abuse, including, but not limited to, the excessive or unreasonable use of force.
- (4) Sexual assault as described in subdivision (b) of Penal Code Section 832.7, and shall extend to acts committed amongst members of any law enforcement agency.
- (5) Demonstrating bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.
- (6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the Commission. ~~Whether a particular factual or legal determination in a prior appeal proceeding shall have preclusive effect in proceedings under this chapter shall be governed by the existing law of collateral estoppel.~~

ADOPT

Text of Proposed Regulatory Action

- (7) Participation in a law enforcement gang. For the purpose of this paragraph, a “law enforcement gang” means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
- (8) Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to this chapter. For purposes of this paragraph, the lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.
- (9) Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

Note: Authority cited: Section 13510.8, Penal Code. Reference: Sections 832.7 and 13510.8, Penal Code.